IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.

J U D G M E N T

LAHIRI V/s PREM PRAKASH

S.B. CIVIL FIRST APPEAL No.36/1986 u/s 96 of the Civil Procedure Code against the judgment dated 27.2.1986 passed by Shri Ramchandra, RHJS, Addl. District & Sessions Judge No.1, Alwar in Civil Case No.48/82

Date of Judgment ** Dec. 11, 2006

PRESENT
HON'BLE DR. JUSTICE VINEET KOTHARI

Dr. Y.C. Sharma for the appellant-defendant.
Shri R.K. Jain for the respondent-plaintiff.

REPORTABLE

BY THE COURT:

1. This appeal u/s 96, CPC, is directed against the judgment & decree dated 27.2.1986 passed by the learned Additional District & Sessions Judge NO.1, Alwar, decreeing the Civil Suit No.48/82 filed by plaintiff Prem Prakash seeking specific performance of the Agreement to Sell dated 6.11.1978 by which defendant Lahiri agreed to sell his 1/4th share of the agricultural land, as specified in the plaint as well as in the impugned judgment, to the plaintiff for a sum of Rs.13,000/- under which an advance of Rs.2,000/- was paid to the defendant and the said Agreement Ex.1 was executed on a stamp paper which was duly notarised.

2. According to the plaintiff, when the defendant refused to execute the sale-deed though the plaintiff expressed his readiness and willingness to perform his part of the contract and pay the balance amount under the said agreement of Rs.11,000/-, the plaintiff preferred the present suit seeking specific performance of the contract.

3. On the basis of the pleadings of the parties, the learned trial court framed the following issues :

> (i)Whether the defendant had agreed to sell the disputed land described in para No.1 of the plaint on 6.11.78 for a sum of Rs.13,000/- against which the defendant received an advance amount of Rs.2000/- from the plaintiff and executed the Agreement to Sell in favour of the plaintiff ?
>
> (ii) Whether the plaintiff is entitled to receive damages to the extent of Rs.4,000/- from the defendant as an alternative to the specific performance ?
>
> (iii) Relief.

4. The plaintiff led oral as well as documentary evidence in support of his case and produced Prem Prakash (PW 1), Heera Lal (PW 2), Ram Prasad (PW 3), Bhagwan Sahai (PW 4), Omkar Lal (PW 5), Rajaram Bhargava, Advocate (PW 6) and Agreement to Sell (Ex.1), receipt (Ex.2), copy of notice (Ex.3), receipt of post-office

(Ex.4) and acknowledgment receipt (Ex.5). The defendant produced himself as DW 1 and did not lead any documentary evidence.

5. The learned trial court after appreciating the aforesaid evidence, arrived at the finding while deciding issue No.1 that the defendant had agreed to sell his 1/4th share of the agricultural land specified in the suit to the plaintiff for a sum of Rs.13,000/- and had received a sum of Rs.2000/- against that and the mere denial on the part of the defendant that he did not execute any such agreement, was of no avail and he was liable for giving the specific performance of the contract and execute the sale-deed in favour of the plaintiff.

The learned trial court further held that even if the said property was mortgaged with the bank by the plaintiff, the receipt of the balance consideration of Rs.11,000/- may be first paid to the bank over the said property and the balance amount, if any, would be paid to the defendant. The trial court accordingly decreed the suit. The bank was, however, neither a party before the trial court, nor it is a party before this court, therefore, the extent of charge or dues of the bank over the said land is not known as no evidence was led in this regard nor any issue was framed.

6. Dr. Y.C. Sharma, learned counsel appearing for the appellant-defendant urged that the grant of specific performance is a discretionary relief and in view of the high increase in price of the agricultural land since execution of the said agreement, the learned trial court ought to have only awarded damages in favour of the plaintiff instead of granting specific performance. He further contended that it being a joint property of the defendant along with his other brothers, such transfer of land in specific performance of the contract could not be awarded by the learned trial court.

7. Shri R.K. Jain, learned opposite counsel however contested its position and relied upon the following judgments in support of his submissions; (i) **Continental Construction Co. Ltd. V/s State of Madhya Pradesh (1988) 3 SCC 82**, **(ii) P.C. Varghese v/s Devaki Amma Balambika Devi and others (2005) 8 SCC 486)** and (iii) **Rameshwar & Anr. V/s Hakim Mohd. Ibadullah Khan (S.B. Civil First Appeal No.101/1986,** decided by this Court on 30.8.2006).

On the strength of these precedents, the learned counsel contended that mere price increase is no ground to deny the specific performance of the contract by the defendant nor the character of the property being a joint property can sustain such denial.

8. Having heard learned counsel for the counsel and upon perusal of the pleadings, evidence and cited case laws, this court is of the opinion that the present appeal has no force and deserves to be dismissed.

9. This Court while relying on various Supreme Court decisions held in **Rameshwar** & **another v/s Hakim Mohd. Ibdullah Khan**'s case (supra) as under :

> "The time elapsing in the litigation in such cases of specific performance is bound to give rise to these kinds of considerations and prices of properties are bound to increase in all towns and cities for a variety of reasons. If the rights of plaintiff were to be defeated only on such considerations under the guise of principles of natural justice, then decree of specific performance cannot be granted in any case. But that is not the law and the law as expounded by the Hon'ble Apex Court in the afore-noted citations is very clear and is contrary to the aforesaid proposition as taken by the learned trial court."

10. The Hon'ble Supreme Court in **P.C. Varghese**'s case has held that in view of section 22(1)(a) of the Specific Relief Act, 1963, the court could grant a decree for partition and separate possession of the property in addition to a decree for specific performance of contract. In the case before the Hon'ble Supreme Court, the appellant had relinquished his claim in respect of the property belonging to the minor and he also prayed for a decree for partition and such a prayer

having been allowed, the Hon'ble Supreme Court held that no exception could be taken to the decree of the learned trial court granting decree for partition and possession besides the decree for specific performance. Relying on this ratio, this can be safely held that the defendant Lahiri was entitled to sell his specified and determined 1/4th share of the property namely agricultural land in question. Therefore, the character of the property claimed to be joint between the four brothers cannot deter this court or even could not have deterred the learned trial court in upholding such decree for specific performance. This is further fortified by the judgment of the Hon'ble Supreme Court in Continental Construction's case (supra), wherein the Hon'ble Apex Court observed that a contract is not frustrated merely because the circumstances in which the contract was made stand altered.The Contract Act does not enable a party to a contract to ignore the express covenants thereof, and to claim payment of consideration for performance of the contract at rates different from the stipulated rates, on some vague plea of equity. The parties to an executory contract are often faced, in the course of carrying it out, with a turn of events which they did not at all anticipate, a wholly abnormal rise or fall in prices, a sudden depreciation of currency, an unexpected obstacle to execution, or the like. There is no general liberty reserved to the courts to absolve a

party from liability to perform his part of the contract merely because on account of an uncontemplated turn of events, the performance of the contract may become onerous.

11. In view of this legal position, this court is of the firm opinion that the specific performance of the contract awarded by the learned trial court is neither required to be upset nor reversed merely on the basis of the normal change in the circumstances namely the price difference over the period. So long as the validity and veracity of the Agreement to Sell Ex.1 cannot be successfully assailed on the basis of the principles incorporated in the Contract Act, and which has not been done in the present case, the use of discretion by the courts in favour of the enforcement of valid contract is only fair and is not to required to be disturbed.

12. Consequently, this court finds no force in this appeal and the same is liable to be dismissed. The defendant shall execute the sale-deed of his 1/4th share of the agricultural land now within a period of three months from today in favour of plaintiff Prem Prakash who shall pay the remaining amount of consideration of Rs.11,000/- to the defendant at the time of registration of such sale-deed. It is needless to add that if there are bank dues against defendant Lahiri with respect to

the charge over the said 1/4th share, still subsisting, the said amount of Rs.11,000/- so paid to the defendant now, will remain under the charge of the bank. The decree be made accordingly.

13. This appeal is accordingly dismissed with no order as to costs.

(Dr.VINEET KOTHARI),J.

chauhan/